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Penal Code

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The following comments on the new Yugoslav Penal  
Code are set forth for whatever interest they may  
possess:

1. The New York Times published in the issue of 29 January 1951 a telegram from  
its correspondent in Belgrade which said, in connection with the Parliamentary  
debates on the new Yugoslav Penal Code, that this reform of the Criminal Law  
is part of the grand plan of the Yugoslav Communist leaders to create a  
democratic Leninist State as opposed to the Stalinist Bureaucratic dictator-  
ship. The correspondent especially underlined the difference between the new  
Yugoslav criminal system and the Stalinist system of justice when Andrei Y.  
Vishinsky, now Soviet Foreign Minister, served as public prosecutor in Moscow.

Such wishful thinking concerning the transformation of Tito's regime from a  
"Stalinist dictatorship" into a "democratic Leninist state" — as if one could  
give the name "democratic" to a Leninist state — is based on the false  
hypothesis that there is any difference whatsoever between the internal policy  
of Tito's Communism and that of Stalinism. That this difference does not  
exist, the correspondent of the American newspaper could see on this very  
occasion of the debate on the new Criminal Law, from different press comments  
and from the explanatory statement concerning the new code presented by the  
Communist Minister of Justice, Frol, in the Parliament. These two Communisms  
are identical.

In order to grasp this identity immediately, it is sufficient to compare the  
definitions of legal theory and practice formulated by the Yugoslav Communists  
with the corresponding definitions formulated by prominent Soviet jurists on  
the same subjects. It is most interesting that the definitions given by the  
Yugoslav lawmakers and jurists correspond in content and almost verbally to the  
definitions, adopted commonly in Russia, which were formulated by Andrei Y.  
Vishinsky himself.

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## CENTRAL INTELLIGENCE AGENCY

- 2 -

50X1-HUM

That Yugoslavia is a Communist State is well known. In every Communist State the aim of laws is to help the Communist revolution and to defend and strengthen the achievements of Communism. This is an axiom of Communism, known to every one familiar with Communist ideology and practice. The Criminal Laws are the most important laws for performing this duty. The two regimes, Tito's and Stalin's, having the same aims, must have the same theory and practice of law.

Naturally, in order to understand this matter clearly one must purge Communist articles and statements of all verbal disguise, and know, for instance, that "Socialism" signifies in fact "the first and inferior stage of Communism," that "people's government" signifies "the dictatorship of the proletariat," that is to say, "the dictatorship of the Communist Party," that "the national liberation war" signifies not only the struggle against the Germans but primarily "the Communist revolution of Tito."

Here we shall give on one side the definitions and the statements of the Yugoslav Communists concerning law in general and the Criminal Law in particular, and on the other side the definition and the statements of the Soviet Communists.

Law in GeneralYugoslavia

The general theory of law and Justice in Yugoslavia was given recently by the ideologue of Communism in Yugoslavia -- of this so-called Titoism -- by Mr. Milovan Djilas, a prominent member of Tito's Government.

The conception of the Law in this theory is that the Law is the "legal application of violence" by the "organs of violence" in order to assure "victory in the class struggle"; in order to protect and develop Communism.

Djilas wrote in his article, published in Borba of 29 November 1950, the following:

"It does follow from all previously said that in the class struggle led by our Party against the bureaucratic, capitalist elements, the strengthening and the deepening of Socialist democracy, as a fundamental form of this struggle, demands a legal application of violence. That is why the preservation -- the improvement and the education -- of our organs of violence (the question is of the organs whose primary duty is to defend the dictatorship of the proletariat against the internal enemies) is the prerequisite for a successful achievement of the class struggle."

Soviet Russia

There has been no fundamental disagreement between Soviet theorists as regards the definition of Law in general. In 1938 Vishinsky defined it as "the corpus of rules of behavior expressing the will of the ruling class, established by legislation, and also of custom sanctioned by the State, and secured by its coercive power in order to protect, to strengthen and to develop such social relations as are favorable for the ruling class."

In 1939 Vishinsky corrected his definition by applying it concretely to the conditions of the Soviet State: "Socialist law during the accomplishment of Socialist reconstruction and the gradual transition from Socialism to Communism" is defined as "system of norms established by legislation by the State of the Toilers and expressing the will of the whole Soviet People, led by the working class headed by the Communist Party, in order to protect, to strengthen and develop Socialist relations and the building of a Communist society."

SECRET

SECRET

## CENTRAL INTELLIGENCE AGENCY

- 3 -

50X1-HUM

"The dictatorship of the proletariat," which the Law in the Communist State must defend, is defined by Lenin as "unrestricted power, beyond the Law, resting on force in the strictest sense of the word." Tito and his Titoist Communists are Leninists. They accept fully this definition.

"The Revolution" which gives the stamp of legality to Communist Yugoslavia, and which must be defended by the Law in this country, was defined by Tito last year in his program speech made in Uzice in the campaign for the general election, 18 February 1950.

"We are living in an open, revolutionary, social transformation of our country. The Revolution does not joke with anything, the Revolution cannot play with any one concession or with anything. The Revolution is cruel. We wish to carry out this Revolution with the least possible number of victims, but if anything whatsoever opposes us it must be overcome; it must disappear."  
(Politika, 19 February 1950.)

Criminal LawYugoslavia

The explanatory statement presented by Minister of Justice Frol to the Parliament in order to bring in a bill on the new Penal Code, was reported in Borba, organ of the Communist Party of Yugoslavia, 27 January 1951:

"The leadership of our State and our Party is deeply and constantly interested in the elaboration of our Criminal Law which has the greatest importance for the protection and the development of the political and social regime existing in our People's Republic."

"The principal bases of our Criminal Law were already established during the war of the national liberation."

"Not one new principle will now be put into the proposed bill of Criminal Law in order to change the present Criminal policy and the criminal responsibility in our State."

Soviet Russia

"Criminal Law is defined as that branch of Law which defends social structure of the existing society against violations called crimes. Crime is defined as a violation of the order of social relations which is protected by Criminal Law."

. . . . .

"In deciding the necessary penalty for an offense the judge should make certain whether the offense was committed by a person belonging to the property-owning class, with the intention of creating or preserving social privileges, or by a destitute person. Such distinctions serve to underline the Soviet point of view that severer oppression is needed against the enemy of the political and social regime than against the citizen who infringe upon his fellows' interests from personal motives. And this is the trend of all Soviet Justice." (Soviet Legal Theory by Rudolf Schlesinger, London.)

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## CENTRAL INTELLIGENCE AGENCY

- 4 -

50X1-HUM

The article in the daily Politika of 26 January 1951, explaining the new Penal Code, says:

"The essential characteristics of the projected Criminal Law are the protection of the established social relations in our People's Republic and the adoption of those results of the Science of Criminal Law which are in accord with the reality existing in our country as a Socialist People's Republic.

"It results from this principal characteristic that this new Law builds up our criminal legislation, begun during the war..... which gives it its revolutionary character. Likewise, our Criminal Law is of a class nature -- because it is directed against our class enemy."

"The Law enumerates the matters protected by the Criminal Law: The Government of the Working People.....the building up of Socialism...."

"Our working people encounter in this building up of Socialism great obstacles, put there not only by the ousted class but also by foreign enemy states. Our Criminal Law must be the weapon in the struggle against all our enemies."

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3. It is obvious that the Law of Yugoslavia protects a continual Revolution which is destroying everything that is against Communism; that this Law has for its object the protection of and the building up of Communism, that is, the creation of a classless society; that this Law protects the Dictatorship of the Proletariat based on terror and violence and also protects the organs of the violence, that is to say, the Secret Police; that the Law in Yugoslavia is primarily the legal form of the application of violence. It is evident that the practice of the Law in Yugoslavia strictly follows the Communist theory of Law. It is clear, according to the declaration of the Yugoslav Communist Minister of Justice, that the new Criminal Law is not intended to introduce any change in the theory and practice prevailing in Yugoslavia. Finally, it is seen that the theory and practice of the Law are identical in Tito's Yugoslavia and in Stalin's Russia. Therefore, it is impossible to expect any transformation of the Yugoslav Communist Regime -- it does not matter which transformation -- Leninist, democratic or something else.

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CENTRAL INTELLIGENCE AGENCY

- 5 -

50X1-HUM

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other reforms belong to the grand design of the Yugoslav Communist leaders for creating a democratic Leninist State, namely, the establishment of factory workers' councils, citizens' councils, the local referenda. But these reforms belong to the same kind of reforms as the new Penal Code, that is to say, to the reforms changing something in form and nothing in essence. This change in form sometimes happens in Communist regimes; in the same way some changes concerning the tempo of the building up of Communism; and finally, the changes of degree of oppression by the Communist regime. But what can never change are the Communist State Organization — the Communist State Machine; the dictatorship in the hands of the Communist Party; the intimidation by terror — "the most powerful weapon in the policy, internal and external"; according to the words of Trotsky in his book, "The Defense of Terrorism." With all this a Communist regime can easily, in case of need, put through all "reforms" and tighten the screws of the Communist State Machine in order to increase the degree of oppression.

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